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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 745

SAMUEL INSULL,

Petitioner,

vs.

NEW YORK WORLD-TELEGRAM CORPORATION, a corporation, **ROY W. HOWARD, INDIANAPOLIS TIMES PUBLISHING COMPANY**, a corporation, **WALTER LECKRONE, E. W. SCRIPPS COMPANY**, a corporation, **LOUIS B. SELTZER, DICK THORNBURG, HERALD-POST PUBLISHING CO.**, a corporation, **EDWARD M. POOLEY, KNOXVILLE NEWS-SENTINEL PUBLISHING COMPANY**, a corporation, **LOYE W. MILLER, PITTSBURG PRESS COMPANY**, a corporation, **WELDMAN W. FORSTER, NEW MEXICO STATE TRIBUNE COMPANY**, a corporation, **DAN BURROUGHS**, and **CHARLES T. LUCEY,**

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The portions of respondents' brief in opposition which comment upon the alleged effect of the judgment for the defendant in the *Memphis* case (*Insull* v. *Memphis Publishing Company*) have nothing whatsoever to do with the question we seek to bring to this Court. The Court of Appeals overruled respondents' motion to dismiss the appeal and we do not understand that respondents' brief amounts to a petition for cross-writ of certiorari to review this part of the Court of Appeals' decision.

So far as pertinent to the petition for certiorari, respondents' brief includes only one point to which reply should be helpful to this Court. On pages 6-7, respondents refer to four early decisions of this Court, in support of their contention that a federal question is not involved.

Three of these cases involved whether the Federal courts had jurisdiction on the ground that the cause arose under the laws of the United States. *Shoshone Mining Co.* v. *Rutter*, 177 U.S. 505 (1900); *Louisville & Nashville Ry. Co.* v. *Western Union Co.*, 237 U.S. 300 (1914); *Smith* v. *Kansas City Title Co.*, 255 U.S. 180 (1921). The instant case has nothing whatsoever to do with this aspect of Federal jurisdiction. It was removed to the District Court because there was diversity of citizenship and the requisite amount in controversy. The fact that the several claims do not arise under a Federal law has nothing whatsoever to do with whether the Federal question described in our petition is involved and should be decided by this Court.

The fourth case cited, *Miller's Executors* v. *Swann*, 150 U.S. 132 (1893), is similarly inapplicable. In 1856, the Congress enacted a statute which granted public lands to the State of Alabama to aid in the construction of railroads. Shortly thereafter, Alabama by statute made certain railroads the beneficiaries of the Federal grant and, by statute in 1870, gave those railroads the right to sell portions of those lands in accordance with procedure included in the 1856 Act of Congress. This case arose after one of the railroads had defaulted in its mortgage obligations to the State, and the State had foreclosed on certain of the lands and thereafter sold those lands to the defendants who then became involved in an action for ejectment. Title to the lands was the sole issue. This did not involve a Federal question since the United States had no rights whatsoever to the lands in question.

None of the cited cases can be compared with the case at bar. What is involved here is the failure to exercise jurisdiction over non-resident defendants because, according to the lower Federal courts, the due process clause forbids this. Our petition for certiorari seeks to review this erroneous determination of an important Federal question.

Respectfully submitted,

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